648

SUPREME COURT OF THE UNITED STATES.

No. 120.

THE UNITED STATES, APPELLANTS,

vs.

CARLOS C. ESPINOSA.

APPEAL FROM THE DISTRICT COURT U. S. FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

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GIDEON, print.

Transcript of the proceedings in case No. 624.—Carlos C. Espinosa, claimant, vs. *The United States, defendant—For the place named La Posa de los Ositos.*

OFFICE OF THE BOARD OF COMMISSIONERS
To ascertain and settle the private land claims in the State of Cal'a.

Be it remembered, that on this twenty-fourth day of February, anno Domini one thousand eight hundred and fifty-three, before the commissioners to ascertain and settle the private land claims in the State of California, sitting as a board in the city of San Franciso, in the State aforesaid, in the United States of America, the following proceedings were had, to wit:

The petition of Carlos C. Espinosa, for the place named Posa de los Ositos, was presented, and ordered to be filed and docketed with No. 624, and is as follows, to wit:

(Vide page 3 of this Transcript.)

Upon which petition the following subsequent proceedings were had in their chronological order, to wit:

SAN FRANCISCO, *Aug.* 24, 1853.

In case No. 624, Carlos C. Espinosa, for the place named "Posa de los Ositos," the deposition of Manuel Castro, a witness in behalf of the claimant, taken before Commissioner R. Aug. Thompson, with document marked R. T., annexed thereto, was filed.

(Vide page 5 of this Transcript.)

SAN FRANCISCO, *May 2d*, 1854.

Case No. 624, on motion of the counsel for the claimant, was ordered to be placed at the foot of the calendar of the 1st class cases on the trial docket.

SAN FRANCISCO, *Aug.* 4, 1854.

Case No. 624 was submitted on briefs, and taken under advisement by the board.

SAN FRANCISCO, *Sept.* 26, 1854.

In the same case, Commissioner R. Aug. Thompson delivered the opinion of the board rejecting the claim.

(Vide page 35 of this Transcript.)

And the following order was made, to wit:

(Vide page 37 of this Transcript.)

Petition.

To the U. S. Board of Land Commission for the ascertaining and settling of private land claims in California.

The petition of Carlos Cayetano Espinoza respectfully showeth unto your hon'ble Board, that on the 7th of February, 1833, he made and presented his petition in writing to the governor of California, soliciting for himself the grant of a piece of land hereafter described, and that said governor referred his petition to the alcalde of Monterey.

That upon his and the prefect's report in favor of your petitioner, said governor, by a decree dated the 16th day of April, 1839, declared your petitioner the lawful owner of said land, and issued to him a formal grant for the same, on the 7th day of May, 1839.

That your petitioner upon application obtained juridical possession of said land, from the proper municipal authority of Monterey, on the 2d day of December, 1843, and is now in possession of the documents of said juridic possession, which he submits hereby to the inspection of your hon'ble Board.

And your petitioner further saith, that all the other documents referred to as the original petition, references, reports, decrees, copies of the original grant and map, are now on file among the archives of California now in possession of the U. S. surveyor general for the State of California, and that certified copies and translations of the same are herewith submitted, and prayed to be made a part of this petition.

That the original grant and map are in the hands of your petitioner, and ready to be exhibited in evidence whenever required.

That the land above referred to is situated in the county of Monterey, is known by the name of Poso de los Ositos, containing four Spanish square leagues, more or less.

And your petitioner further saith, that he has been in the quiet and peaceable possession of said land, from the year 1833, and is not aware of the existence of any title conflicting with or superior to his own.

He therefore claims to be the owner of said land, and prays that your hon'ble Board will confirm and validate his claim and title thereto.

CLARK, TAYLOR & BECK,
Atty's for Petitioners.

Filed in office, February 24, 1853. GEO. FISHER, *Sec'y.*

Recorded in Vol. I. of Petitions, on pages 621, 622.
GEO. FISHER, *Sec'y.*

(Case 624.)

Deposition of Manuel Castro.

OFFICE OF THE COMMISSIONERS OF LAND CLAIMS IN CALIFORNIA.

This day, before Commissioner Robt. A. Thompson, came Manuel Castro, a witness in behalf of claimant, Carlos C. Espinoza, case 624, and after being duly sworn, deposed as follows:

Present, J. Clark, attorney for claimant, and Robert Greenhow, asso'te law agent.

Question by Claimant's Attorney.

What is your name, age, and place of residence?

Ans. My name is Manuel Castro; my age is thirty-one years; residence Lower California.

Question by same. Look at the paper marked, and with the initials R. T., now shown you and filed in this case, purporting to be a grant from Governor Alvarado to claimant, together with the documents of juridical possession, and state what you know of their authenticity and the genuineness of the signatures thereto.

Answer. I know the handwriting of Juan B. Alvarado, Manuel Jimeno, Pablo de la Guerra, Teodoro Gonzalez, José Maria Gutierrez, Francisco Rico, Petronilo Rios, having seen them all write. My own signature, together with those of the persons above named, wherever they occur on it, said document or paper, are genuine, and were, I have no doubt, made at the time they purport to have been executed. All the signatures to the documents of juridical possession were made in my presence.

Question by same. State what you know in relation to the occupation, cultivation, and improvement, erection of buildings, &c., on the rancho called "Paso de los Ositos," claimed by the claimant in this case.

Answer. In 1842 I passed said rancho, and saw there a house of adobes, and covered with tiles, corrals for cattle and horses, fences enclosing cultivated lands; I also saw about seven or eight hundred head of cattle, seventy or eighty head of horses and some sheep; some thirty or forty Indians—laborers employed in cultivating the soil, herding cattle; and there were also several mechanics' shops, such as blacksmith, shoemakers, and weavers' for the manufacture of blankets, all employed by the claimants on the ranch. I do not know certainly when the house was built; it was built more than a year before I was there. I also knew that claimant went and settled on the ranch with his family immediately after he obtained the grant, and has continued to reside there ever since, except for a short time, when his house was attacked by the Indians; he then retired to the neighborhood of Monterey, and returned to the rancho as soon as the Indians had left.

And further this deponent sayeth.

MAN'L CASTRO.

Sworn to and subscribed before me, this 24th day of August, 1853.

R. AUG. THOMPSON, *Com'r*.

Filed in office, Aug. 24th, 1853.

GEO. FISHER, *Sec'y*.

[1 S. D. K.]

Espediente promovido por Carlos Cayetano Espinoza, en pretension del parage nombrado Posa de los Ositos.—1839.

(201.)

[2 S. D. K.]

Ex'mo S'or Gov'r:

Carlos Cayetano Espinoza, natural de este Alto Territorio: con el mas debido respecto, ante V. E. se presenta y dise que siendo poseedor de tres cientas y cincuenta cabezas de ganado vacuno una manada de cincuenta lleguas y quinse caballos mansos, y no teniendo un parage ó sitio donde poner d'hos bienes para su procreacion y aumento ocurro á la siempre bien acreditada justificacion de V. E. afin de que se digne concederme el sitio llamado la subida de la mesa se la Posa de los Ositos, hasta el Arroyo del Pina, ql. dista de la mision de la Soledad seis leguas, y como para poderlo obtener se necesita el probeido conviniente para seguerse los tramites correspondientes. P. T., á V. E. rendidamente suplico se sirva decretar en favor del ql. suplica los ql. allase de just'a de ql. recibiré gracia acompañando á V. E. debidamente el diseño del mencionado parage. Juro no ser de malicia y lo necesario, &c.

[3 S. D. K.]

Mont'y, 7 de Febrero, de 1833.

CARLOS CALLETANO ESPINOSA.

MONTEREY, *Febr'o* 12, *de* 1839.

De conformidad con las leyes y reglam'tos de la materia informe los señores alcaldes de esta municipalidad.

ALVARADO.

E. S.:

Impuesto de la solicitud del C'no Carlos Espinoza, esponemos ql. teniendo los requisitos ql. previene la ley y todas las demas circumstancias que se requieren para obtener en propiedad algun terreno baldio, especialmente por estar distante de la mision de la Soledad seis leguas, á cuya mision pertenecia y hasta lo presente no lo tiene poseido ponemos á la deliberacion de V. E. la proposicion sig'te:

Se puede conseder al suplicante et terreno que pretende por tener los requisitos necessarios.

Monterey, Febrero 12, de 1839.

[4 S. D. K.]

SIMEON CASTRO, y
FELIZ MAN'L SOLEDAD.

[*For map see original, page* 9.]

MONTEREY, 12 *de Marzo, de* 1839.

Informe el S'or Prefecto del primer, distrito sobre el contenido en esta instancia.

ALVARADO.

PUEBLO DE SAN JUAN DE CASTRO, *Marzo* 20, *de* 1839.

Visto el pareser de los S'res Alcaldes de Monterey, y teniendo en consideracion, que el terreno que solicita el interesado esta baldio; informe que puede concederse sin obstaculo alguno.

JOSE CASTRO.

[5 S. D. K.] MONTEREY, *Abril* 16, *de* 1839.

Vista la peticion con que da principio este espediente el informe del S'or Prefecto el de el Alcalde de este pueblo, con todo lo demas que se tuvo presente y ver convino de conformidad con lo dispuesto, por las leyes y reglam'tos de la materia, con especialidad la de 18 de Agosto, de 1824, y el de 21 de Noviembre, de 1828, se declara al C'o Carlos Calletano Espinoza, dueño en propiedad del parage nombrado Subida de la Mesa de la Posa de los Ositos, colindantes con la Sierra Grande, con el Rio Grande, con el Arroyo del Pino, y la mesa de la Posa, indicada todo en estencion de 4 sitios de ganado mayor; librese el correspondiente despacho al interesado, tomese razon en el libro respectivo y reservese el espediente para la debida aprobacion de la ex'ma junta departmental.

El S'or Dn. Juan B. Alvarado, gobernador del departamento de las Californias, lo mando, decreto y firmó, de que doy fée.

[6 S. D. K.] ALVARADO.

OFFICE OF THE SURVEYOR GENERAL OF THE UNITED STATES FOR CALIFORNIA.

I, Samuel D. King, Surveyor General of the United States for the State of California, and as such now having in my office, and under my custody, a portion of the archives of the former Spanish and Mexican Territory or department of Upper California, do hereby certify, that the seven preceding and hereunto annexed pages of tracing paper, numbered from one to seven, inclusive, and each of which is verified by my initials, (S. D. K.,) exhibit true and accurate copies of certain papers on file, and forming part of the said archives in this office.

And also, that the word between "de" and "sitios" in the tenth line from the bottom of the fifth page has in the original been altered in the manner represented in the copy.

In testimony whereof, I have hereunto signed my name officially, and affixed my private seal, (not having a seal of office,) at [SEAL.] the city of San Francisco, Cal., the 15th January, 1853.

SAM'L D. KING,
Surv'r Gen'l Cal.

Filed in office, Feb'y 24th, 1853.

GEO. FISHER, *Sec'y*.

1839.

Espediente B.

Record of Proceedings at the instance of Carlos Cayetano Espinosa, soliciting the location called De los Ositos.—201.

Excellent Sir Governor:

Carlos Cayetano Espinosa, a native of this Upper Territory, with the utmost respect, presents himself before you and says: That being possessed of three hundred and fifty heads of black cattle, a flock of fifty mares, and fifteen tame horses, and not having a location or sitio where to place said stock for its production and increase, I apply to your excellency's well-known justice, for the purpose that you will be pleased to grant me the sitio called "La Subida de la Mesa de la Posa de los Ositos," to the Arroyo del Pino, which is six leagues distant from the Mission de la Soledad; and as to be enabled to obtain it, the suitable provisions are required to *to* follow the corresponding procedure, I humbly pray your excellency to be pleased to decree in favor of the petitioner what may be founded in justice, whereby I shall receive favor, accompanying to you in due form the plan of the mentioned land. I swear there is no malice herein, and what else is necessary, &c.

Monterey, 7th February, 1839.

CARLOS CAYETANO ESPINOSA.

(In the margin.)

MONTEREY, *February 12th*, 1839.

Conformable to the laws and regulations on the subject, the alcalde of this municipality will report.

ALVARADO.

Excellent Sir:

The solicitation of the citizen Carlos Cayetano Espinosa having been referred to us, we represent, that possessed by the necessary qualifications provided by law, and all the other circumstances requisite to obtain any vacant land in ownership being present, especially that of being six leagues distant from the Mission de la Soledad, to which mission it belonged, and as it has not passed it up to the present time, we submit to your excellency's deliberation the following proposition:

The petitioner can be granted the land he solicits, as being possessed of the necessary qualifications.

Monterey, February 12th, 1839.

SIMEON CASTRO,
FELICIANO SOBERANES.

MONTEREY, *12th of March*, 1839.

The prefect of the 1st district will report on the contents of this instance.

ALVARADO.

PUEBLO OF SAN JUAN DE CASTRO, *March 20th*, 1839.

Having seen the opinion of the alcalde of Monterey, and taking in consideration that the land the interested party solicits is vacant, I report that it can be granted without any obstacle.

JOSE CASTRO.

MONTEREY, *April* 16*th*, 1839.

In view of the petition with which this espediente commences, the report of the prefect and that of the alcalde of this pueblo, with whatever else to bear in mind, and was to the purpose in conformity with the requirements of law and regulations on the matter, especially that of the 18th of August, 1824, and 21st November, 1828, the citizen Carlos Cayetano Espinosa is hereby declared owner of in his own right of the location called "Subida de la Mesa de la Posa de los Ositos," bordering on the Sierra Grande, on the Rio Grande, on the Arroyo del Pino, and la Mesa de la Posa, already mentioned, the whole in extent four leagues, (sitios de gañado mayor.) Let the corresponding document be issued to the interested party, entered in the respective book, and be the expediente reserved for the due approbation of the excellent departmental assembly.

Don Juan Bautista Alvarado, governor of the department of both Californias, so ordered, decreed, and signed it, of which I bear testimony.

ALVARADO.

Filed in office, Sept. 22d, 1853.

GEO. FISHER.

Sello Tercero, Un Peso.

Habilitado provisionalm'te por la aduana maritima del puerto de Monterey, en el departamento de las Californias, para los años de mil ochocientos cuarenta y cuatro, y mil ochocientos cuarenta y cinco.

PABLO DE LA GUERRA.

MICHELTORENA.

[SEAL.]

Ex'mo S'or Com'te G'ral:

Estevan de la Torre y Carlos Espinosa, hacen presente á V. E. que siendo ambos dueños de los terrenos conocidos, con los nombres de Arroyo Seco y La Posa, cuyos dos terrenos se han unido por mutuo convenio para seguridad de los robos que haya y haviendo fabricado unas casitas, y metido cuarto cientos reses doscientos boregas y ochenta yeguas que han permanecido mas de un año, hemos tenido la desgracia q'l los indios nos quemaron las casas aunque este da'no esta repuesto pero tambien nos llevaron en lo absoluto todo la caballada; la que no pudiendo reponer en pronto p'r estar las aguas encima, y ver tan indispensables hemos habidos todos los vienes que nos quedan al rancho de D. Salvador Espinosa. Por lo que suplicamos á V. E. se digne darnos años mas en proroga p'a volverlo á fomentar evitando de este modo q'l

sea enunciado el ya citado terreno en lo q'l recibiremos gracia, jurando lo necesario.

Monterey, 24 de Octubre, de 1844.

ESTEVAN DE LA TORRE,
CARLOS ESPINOSA.

Ex'mo S'or.

MONTEREY, *Oct'bre* 26, *de* 1844.

Atendidas las razones q'l esponen los suplicantes, con sedo su pedido.

MICHELT'A.

Filed in office, March 9, 1854.

GEO. FISHER, *Sec'y*.

Copy.

Stamp Third, One Dollar.

Provisionally provided by the marine custom-house of the port of Monterey, in the department of California, for the years 1844 and 1845.

PABLO DE LA GUERRA.

MICHELTORENA.

[Marine Custom house of Monterey.]

Most Excellent Commanding Gen'l:

Estevan de la Torre and Carlos Espinosa represent to yo. E., that they being both owners of the tracts of land known by the names of Arroyo Seco (raven) and La Posa, (the puddle,) which two tracts were joined, by a mutual agreement, for security from the existing robbery, and having built thereon a few small houses, and put thereon four hundred head of cattle, five hundred sheep, and eighty mares, which have remained there for upwards of a year: We have had the misfortune that the Indians burnt up our houses, and although this loss has been restored, still they have carried away from us absolutely the whole stud, which it being impossible for us to restore with speed, as the rainy season is coming on, and it is so indispensable. We have brought all the stock that remained to the rancho of Don Salvador Espinosa.

Therefore, we pray Y. E. will be pleased to grant us the propagation of (apparently torn in the original) terms longer, that we may be able to improve it again, thus avoiding the above-mentioned land being denounced. Whereby we shall receive a favor. We swear, as required.

Monterey, Oct. 24th, 1844.

(S'gd) ESTEVAN DE LA TORRE.

M't Excellent Sir.

(The following order is written on the margin of the petition:)

MONTEREY, *Oct. 26th*, 1844.

In consideration of the reasons stated by the petitioners, I hereby grant their prayer.

(S'gd) MICHELTORENA.

I, George Fisher, secretary to the board of U. S. land commissioners for ascertaining, &c., do hereby certify, that the foregoing is a true and correct translation of a Spanish document, of the purport as herein set forth, filed in case No. 624 on the docket of said board, now in this office.

San Francisco, Calif'a, this 11th day of August, A. D 1854.

GEO. FISHER, *Sec'y*.

Filed in office, Aug. 11, 1854.

Testimonio del Espediente original del rancho nombrado "Posas" de los Ositos, constante se cuatro sitio de ganado mayor, propio del C. Carlos Espinosa, vecino del pueblo de San Juan.—Año de 1843.

Sello Cuarto, Dos Reales.

Habilitado provicionalmente por la aduana maritima del puerto de Monterey, en el departamento de las Californias, para el año de mil ochocientos cuarenta y tres.

MICHELTORENA. MANUEL CASTAÑARES.

[SEAL.]

S'or Juez de Paz de 1a instancia:

Carlos C. Espinosa, ciudadano Mejicano, vecino de esta comprehencion ante la justificacion de V. como mas haya lugar en dro. dijo; ql. habiendo adquirido concesion propia del gobierno departamental del parage nombrado Posas de los Ositos, he de merecer de V. se sirva darme posecion juridica conforme esta prevenido en el articulo seg'do y tercero del titulo de dicho terreno, qe. debidamente acompaño. Por tanto, á V. M. suplico se digne acceder á mi peticion de qe. recibiré gracia y justicia; juro, &c.

Monterey, Junio 7, de 1843.

Por el solicitante,

MANUEL CASTRO.

Juan B. Alvarado, gobernador interino del departamento de las Californias:

[SEAL.] Por cuanto el Co. Carlos Calletano Espinosa ha pretendido para su beneficio personal y el de su familia, el paraje nombrado Subida de la Mesa de la Posa de los Ositos, colindante con la Sierra Grande, con el Rio Grande, con el Arroyo del Pino y la Mesa de la Posa, indicada practicadas previamente las diligencias y averiguaciones consernientes seg'n lo dispuesto por leyes y reglam'tos, usando de las facultades qe. me son conferidas á nombre de la nacion Mejicana, he venido en conferirle el mencionado terreno declarandole la propiedad de el por las presentes letras y sugetandose á la aprovacion ó desaprovacion de la ex'mo junta departamental, y á las condiciones siguientes:

1a. Podra cerearlo sin perjudicar las travecias caminos y servidumbres: lo disfrutara libre y esclusivamente destinandole al uso ó cultivo

qe. mas le acomode, pero dentro de un año fabricará casa y estará habitado.

[*For map see original, page* 19.]

2a. Solicitara del juez respectivo ql. le de posecion juridica en virtud de este despacho por el cual se demarcaran, los linderos en cuyos limites pondrá á mas de las mojoneras algunos arboles, frutales, ó silvestres de alguna utilidad.

3a. El terreno de que se hace donacion es de cuatro sitios de ganado mayor, como se indica en el diseño que corre agregado en el espediente. El juez que diere la posecion lo hará medir conforme á ordenanza quedando el sobrante ql. resulte á la nacion para los usos convenientes.

4a. Si contraviniere á estas condiciones perdera su derecho al terreno y será denunciable por otro.

En consecuencia mando que teniendose por firme y valedero se tome razon, de el en el libro á que corresponde, y se entreque al interesado pa. su resguardo y demas fines.

Dado en Monterey, á siete de Mayo, de mil ochocientos treinta y nuevo.

JUAN B. ALVARADO.
MAN'L JIMENO,
S'rio del despacho.

Sello Cuarto, Dos Reales.

Habilitado provicionalmente por la aduana maritima del puerto de Monterey, en el departamento de las Californias, para el año de mil ochocientos cuarenta y tres.

MICHELTORENO. MANUEL CASTANARES.

[SEAL.]

Que subscribe: Secretario del gob'no del departam'to de los Californias, certifico: Que el diseño ql. correjido se demuestra á la vuelta es igual al original, ql. existe en la s'cria de mi cargo.

Monterey, treinta de Junio, de mil ochocientos cuarenta y tres.

MANUEL JIMENO.

Queda tomada razon de esta titulo en el libro correspondiente a foja 6, vuelta.

MANUEL JIMENO.

El señor gobernador ha dispuesto se tome razon de este despacho en la prefectura del primer distrito.

JIMENO.

Sello Tercero, Un Pesos.

Habilitado provicionalmente por la aduana maritima del puerto de Monterey, en el departamento de las Californias, pa. el año de mil ochocientos cuarenta y tres.

MICHELTORENO. PABLO DE LA GUERRA.

[SEAL.] MONTEREY, 1o. *de D'bre, de* 1843.

Por presentado y admitido prosedase por mi, el presente juez de paz y de primero instancia, á la medicion, señalamiento de linderos y posecion judicial ql. solicita el interesado en esta instancia, señalandose pa. ejecutarlo el dia 2 de D'bre, del presente año, por no haber habido lugar antes, pa. lo ql. se citaron con boleta de comparendo á las colindantes. Asi yo el juez de paz constitucional lo decretó, mandé y firmé, con los de assistencia.

TEODORO GONZALES.

De Ass'a: JOSE MARIA GUTIERREZ.
De ass'a: FRANCISCO PRICE.

En la f'ha presente el C. Carlos Espinosa, se le notifico el anto ql. antecede y entendido digo lo oye y ql. se da por citado firmando conmigo y los de asistencia.

TEODORO GONZALES.
Por Carlos Espinosa, MANUEL CASTRO.

De ass'a: FRANCISCO PRICE.
De ass'a: JOSE MA. GUTIERREZ.

En la misma f'ha se libraron las boletas ql. se manda en el auto antecedente y para constancia lo rubrico por auto con los de ass'a.

De asist'a:
JOSE MARIA GUTIERREZ,
As'a:
FRANCISCO RICO.

RANCHO DE LA POSA DE LOS OSITOS, *D'bre* 2, *de* 1843.

Presente, el colindante D'n Petronilo Rios, nombré por medidores á Palmario Gomez y á Andres Suares, pa. las mediciones, señalamiento de linderos y posecion del C. Carlos Espinosa, quienes previa la aceptacion y juramento procederan al desempeño de su encargo. Asi yo el juez de paz constitucional lo mandé y firmé, con los de asistencia.

TEODORO GONZALES.

De ass'a:
JOSE MA. GUTIERREZ,
De ass'a:
FRANC'O PRICE.

En la misma f'ha presente los C. C. Andres Suares y Polinario Gomez, se les notifico el auto de su nombramiento y entendidos dijeron lo ayen y aceptan d'ha comision, jurando por Dios n'tro S'or, y la señal

de la cruz, desempeñarla fiel, y legalmente á su saber, y entender y no firmaron pa. no saber hasiendolo yo con los de asistencia.

TEODORO GONZALES.

De ass'a:
FRANC'O RIOS,
De ass'a:
JOSE MA. GUTIERREZ.

Incontinente yo el espresado juez mandé traer el cordel con ql. se habian de medir las tierras, y los espresados medidores lo tomaron y ante mi con vara de medir Mejicana midieron un cordel de cincuenta varas pa. hacer, lo medida y lo firmo, con los de assistencia, de que doy fée.

TEODORO GONZALES.

De ass'a:
FRANC'O RICE,
De ass'a:
JOSE MA. GUTIERREZ.

Sello Tercero, Dos Reales.

Habilitado provisionalmente por la aduana maratima del puerto de Monterey, en el departamento de las Californias, pa. el año de mil ochocientos cuarenta y tres.

MANUEL CASTANARES,
PABLO DE LA GUERRA.

MICHELTORENA.
[SEAL.]

En el mismo parage dia mes y año siendo las nueve de la mañana, yo el presente juez de paz, mandé á los medidores nombrados se dispusiesen pa. la medicion de tierras ql. se la habia de hacer al C. Carlos Espinosa, q. puestos en el Pino, (linderos Petronito Rios,) sueste á noroeste midieron hasta la subida de la Mesa de San Vicente, seis cientos veinte cordeles de á cincuenta varas de largo; y desde el rio para el sur hasta el pie de la sierra, los cientos diez cordeles de à cincuenta varas de ancho. En cuyos mendiciones mandé se formaron las mojoneras correspondientes ql. señalen los linderos ql. le pertenesen. El terreno medido corresponde á cuatro sitios de ganado mayor, y lo firmaron con migo los colindantes, y por el interesado Don Manuel Castro, y los testigos de asistencia.

[F] TEODORO GONZALES.
Pr. C. C. E., MAN'L CASTRO.

PETRONILLO RIOS,
De ass'a:
FRAN'CO RIOS,
De ass'a:
JOSE MA. GUTIERREZ.

En el rancho nombrado Posas de los Ositos, jurisdiccion de la Soledad. El dia 2 de D'bre, de 1843, yo juez de paz, y de primera instancia, y su jurisdiccion despues de practicadas las medidas del mencionado rancho, pr. lo ql. resulta cuatro sitios de ganado mayor, y presente el colindante Petronilo Rios, siendo este conforme con lo demas de auto mande ql. entrase en posecion, del nominado rancho el C. Castro Espinosa, bajo la medida sitada y formalisada, acostumbrada en este caso lo que verifico inmediatamente arrancando yerbas y haciendo demostraciones como dueño del terreno, de ql. se ha dado juridica posecion culla validacion la autoriso firmando el colindante, y ynteresado de asistencia.

TEODORO GONZALES,
P. C. E., MANUEL CASTRO.

PETRONILO RIOS,
De ass'a: JOSE MARIA GUTIERREZ,
Ass'a: FRANC'O RIOS.

MONTEREY, *D'bre* 2, *de* 1843.

Tomese razon en el libro de poseciones y devuelva se este espediente original, pa. los fines ql. mas convengan. Asi yo el juez de paz y de primera instancia, C. Teodoro Gonzales, lo decreta mandó y firmo con los de asistencia.

TEODORO GONZALES.

De ass'a: JOSE MA. GUTIERREZ,
De ass'a: FRANC'O RIOS.

En la misma fecha se tomo razon de esta posecion, á fojas 21 del libro respectivo, y se le devolvió este esped'te al C. Carlos Espinosa, y pa. su constancia, lo firmo y rubrico.

GONZALES.

De ass'a: FRANC'O RIOS,
De ass'a: JOSE MARIA GUTIERREZ.

Filed in office, Feb'ry 24th, 1853.

GEO. FISHER, *Sec'y*.

Translation of grant of juridical possession.

Translation.

Original certified record of proceedings relative to the rancho called Posas de los Ositos, consisting of four Spanish leagues, the property of the citizen Carlos Espinosa, resident in the pueblo of San Juan.—A. D. 1843.

Fourth Stamp, Two Shillings.

Validated provisionally by the maritime custom-house in the port of Monterey, in the department of the Californias, for the year one thousand eight hundred and forty-three.

MICHELTORENO. MANUEL CASTAÑARES.

To the Justice of the Peace and of the first instance:

I, Carlos C. Espinosa, Mexican citizen, resident of this district, as best may be consistent with law, state before your honor, that having acquired a proper grant from the departmental government of the place Posas de los Ositos, I am to be indebted to you for being pleased to give me judicial possession, conformable to the provision in the second and third article of the deed of grant to said land, which I duly accompany.

Wherefore, I pray you to be pleased to accede to my petition, whereby I shall receive favor and justice. I swear, etc.

Monterey, June 7th, 1843.

For petitioner,
MANUEL CASTRO.

[STAMP.] Juan B. Alvarado, Governor ad interim of the department of both Californias:

Whereas, the citizen Carlos Calletano Espinosa has claimed, for his personal benefit and that of his family, the place called "Subida de la Mesa de la Posa de los Ositos," bordering on the Sierra Grande, on the Arroyo del Pino, and the said Mesa de la Posa, having previously taken the necessary action and made the necessary investigations, according to the provisions of laws and regulations, in exercise of the power vested in me in the name of the Mexican nation, I have concluded to bestow said land on him, declaring it his property by the present letters-patent, subject to the approbation or rejection of the excellent departmental assembly, and to the following conditions:

1st. He may fence it without prejudice to the crossings, roads and servitudes; he may enjoy it freely and exclusively, appropriating it to the use or that best may suit him, but within a year he is to build a house to be inhabited.

2d. He will solicit of the respective magistrate to give him juridical possession in virtue of this document, by whom the boundaries are to marked out, on the extremities of which, besides the landmarks, he is to put some fruit trees or wild ones of some usefulness.

3d. The land, of which mention is made, consists of four square leagues, (sitios de ganado mayor,) as is indicated in the plot attached to the espediente. The judge who shall give the possession will cause it to be measured conformable to ordinance, leaving the surplus that may result to the nation for convenient purposes.

4th. If he should violate these conditions he will lose his right to the land, and may be denounced by some other party.

Consequently, I order that this being held firm and valid, it be entered in the proper book, and delivered to the interested party for his security and other purposes.

Given in Monterey on the 6th of May, eighteen hundred and thirty-nine.
JUAN B. ALVARADO.

This title has been entered in the corresponding book on folio 6, over.
MANUEL JIMENO.

His excellency, the governor, has ordered this document to be recorded in the prefecture of the first district.

JIMENO.

(*Plot.*)

The undersigned, secretary to the government of the department of both Californias, certifies that the amended plot exhibited on the reverse page is like the original deposited in the secretary's office under my charge.

Monterey, 30th June, 1843.

MANUEL JIMENO.

Third Stamp, One Dollar.

Validated provisionally by the maritime custom-house of the port of Monterey, in the department of both Californias, for the year one thousand eight hundred and forty-three.

MICHELTORENA. PABLO DE LA GUERRA.

[STAMP.]

MONTEREY, 1*st December*, 1843.

It be solicited and admitted, I, the present justice of the peace, and of the first instance, am going to proceed to the measurement, marking of boundaries, and judicial possession solicited by the interested party in this instance, setting apart the 2d day of December, this year, for its execution, not having been convenient before, for which, and the bordering land-owners are to be summoned to appear.

Thus did I, the constitutional justice of the peace, decree, order, and sign, together with the attesting witnesses.

TEODORO GONZALES.

Ass.: JOSE MARIA GUTIERREZ,
FRANCO. RICO.

On the same day, Carlos Espinosa was notified of the foregoing decree, and having had an understanding of it, he said he is aware of it, and that he admits service, signing with me and the attesting witnesses.

TEODORO GONZALES.

Ass.: FRANCO. RICO,
JOSE MA. GUTIERREZ.

For Carlos Espinosa, MANUEL CASTRO.

Under the same date the summons ordered in the foregoing decree was issued, and to attest it, I subjoin my flourish, together with the signature of the attesting witnesses.

(Flourish.)

Ass.: JOSE MA. GUTIERREZ,
FRANCO. RICO.

RANCHO DE LA POSA DE LOS OSITOS,
December 2d, 1843.

The bordering land-owner, Dn. Petrolino Rios, being present, I appointed for measurers Polenedio Gomes and Andres Suares, for the

mensuration, marking of boundaries, and possession to Carlos Espinosa, who, after previous acceptance and oath, are to proceed to the discharge of their office.

Thus did I, the constitutional justice of the peace, order and sign, together with the assistants.

TEODORO GONZALES.

Ass.: Jose Ma. Gutierrez,
Fr'co Rico.

On the same day the citizens Andres Suares and Polinario Gomes being present, they were notified of the decree of their appointment, and having had an understanding thereof, they said that they were aware of it, and that they accepted said commission, swearing by God our Lord and the sign of the cross, to discharge it faithfully and to the best of their knowledge and understanding. They did not sign, as they could not write, but I did, together with the attesting witnesses.

THEODORO GONZALES.

Ass.: Fr'co Rico,
Jose Ma. Gutierrez.

Thereupon I, the said justice, ordered the line wherewith the ground had to be measured to be brought in, and the said measurers took it, and before me, with a usual Mexican vara measure, measured off a line of fifty varas, wherewith to make the measurement, and I sign with the attesting witnesses, myself attesting.

THEODORO GONZALES.

Fr'co Rico,
Jose Ma. Gutierrez.

[stamp.]

In the same place, on the same day of the same month and year, it being nine o'clock in the morning, I, the present justice of the peace, ordered the appointed measurers to set about the mensuration of the land to be made by them to the citizen Carlos Espinosa, and being placed at el Pino, (boundaries of Pilionelo Rios,) southwest to northwest, they measured off up the ascent of la Mesa de San Vicente, six thousand and twenty lines of fifty varas in length, and from the rio towards the south as far as the foot of the sierra, two hundred and ten lines at fifty varas in width, under which measurement I ordered to be established the corresponding landmarks to designate the boundaries belonging thereto.

The land measured answers to four square leagues, and together with me, the bordering land-owners, and for the interested party, Don Manuel Castro, and the attesting witnesses signed.

TEODORO GONZALES.
MANUEL CASTRO.

Petronelo Reos,
Ass.: Franco. Rico,
Joe Ma. Gutierres.

On the rancho called Posas de las Ositos, jurisdiction of La Soledad, the 2d day of December, 1843, I, as justice of the peace and of the first instance, and its jurisdiction, after having finished the mensuration of said rancho, whereby it proves to contain four square leagues, and the bordering land-owner, Petrolino Rios being present, *the* being in conformity with the other judicial proceedings, I ordered that the citizen Carlos Espinosa should enter into possession of said rancho under the aforesaid mensuration, and in such cases customary formalities, which he immediately carried into effect by pulling up grass and making demonstrations as owner of the land, of which juridical possession has been given him, the validity of which I certify; the bordering land-owner and the interested party signing, together with the attesting witnesses.

THEODORO GONZALES.
For C. E., MANUEL CASTRO.

Ass.: JOSE DE GUTIERRES,
FR'CO RICO,
PETROLINO RIOS.

MONTEREY, *December 2d*, 1843.

Let it be entered in the book of possessions, and return this espediente in original to the interested party, for such purposes as best may suit him.

Thus did I, the justice of the peace and the first instance, (Teodoro Gonzales,) decree, order, and sign, together with the attesting witnesses.

TEODORO GONZALES.

JOSE MA. GUTIERRES,
FR'CO RICO.

On the same day this possession was entered on folio 21, in the respective book, and this espediente was returned to the citizen Carlos Espinosa, and to attest it, I signed and put my flourish.

GONZALES. (Flourish.)

Ass.: FR'CO RICO,
JOSE MA. GUTIERREZ.

Filed in office, July 27th, 1854.

GEO. FISHER, *Sec'y*.

A certified copy of the Record, from the Archives of Monterey.

Carlos Espinosa.

En 2 de D'bre, de 1843, se dio posecion juridica del terreno conocido con el nombre de la Posa de los Ositos, en limites del Pino hasta la Mesa de Sn. Vicente, constante de cuatro sitios de ganado mayor, cuyos linderos señalaron con iniciales en el diseño del terreno que corre agregado al espediente, de posecion ql. se entrego original.

GONZALES.

Translation.

On the second of December, eighteen hundred and forty-three, judicial possession was given of the land known by the name of La Posa de los Ositos, within the boundaries from El Pino, as far as the Mesa de S. Vicente, containing four square leagues, whose boundaries are indicated by initials in the map of the land, which is attached to the original of possession, which has been delivered to the party.

GONZALES.

OFFICE OF COUNTY RECORDER,
Monterey county, State of California.

I, James H. Gleason, county recorder of the county and State before written, and, as such, having in my office and in my charge and custody a portion of the archives of the former Spanish and Mexican territory or department of Upper California, by virtue of the power vested in me by law, do hereby certify, that the writing on this sheet, in the Spanish language, exhibits a true copy of a page of writing in a stitched pamphlet, entitled and bearing in the corner: 1835, Libro de poseciones de 1835, y signe 1837 y del año 1840, y signe en el año 1842, the same being now on file and forming a part of the records in this office.

[SEAL.] In testimony whereof, I have hereunto signed my name officially, and caused my seal of office to be affixed, at the city of Monterey, this thirty-first day of October, 1853.

JAS. H. GLEASON,
County Recorder.

Filed in office, 26th, 1853.

GEO. FISHER, *Sec'y.*

Certified copy from Archives of Monterey.—(*Translation.*)

Carlos Espinosa.

On the second of December, eighteen hundred and forty-three, juridical possession of the land known by the name of "La Posa de los Ositos," within the boundaries from "El Pino," as far as the "Mesa de San Vicente," containing four square leagues, whose boundaries are indicated by initials in the map of the land, which is attached to the original espediente of possession, which has been delivered to the party.

GONZALES.

OFFICE OF COUNTY RECORDER,
Monterey county, State of California.

I, James H. Gleason, county recorder of the county and State before written, and as such having in my office and in my charge and custody, a portion of the archives of the former Spanish and Mexican territory or department of Upper California, by virtue of the power vested in me by law, do hereby certify, that the writing on this sheet,

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in the Spanish language, exhibits a true copy of a page of writing in a stitched pamphlet, entitled and bearing on its corner: 1835, Libro de poseciones, y signe 1837, y del año 1840, y signe en el año de 1842, the same being now on file and forming a part of the records of this office.

In testimony whereof, I have hereunto signed my name officially and caused my seal of office to be affixed, in the city of Monterey, this thirty-first day of October, 1853.

JAMES H. GLEASON,
County Recorder, Monterey county.

Opinion.

CARLOS CAYETANO ESPINOSA vs. THE UNITED STATES. } No. 624.—Posa de los Ositos.

The original papers filed and proven in this case, in support of the claim of the petitioner, consist of the grant to the claimant made by Governor Alvarado on the 6th day of May, 1839, and a testimonial of an act of juridical possession of the land described in the grant, executed by Theodoro Gonzales, justice of the peace and of the first instance, of the jurisdiction of Monterey, on the 2d day of December, 1843. The genuineness of these documents, and in full compliance with the conditions of the grant, are established by the testimony.

The only question of difficulty presented in the case is, in fixing the location and identity of the land granted. It is described in the grant as the place called "Subida de las Meza de la Posa de los Ositos," bounded by the Sierra Grande, the Rio Grande, the Arroyo de Pino, and the said Mesa de la Posa. The third article or condition of the grant declares it to consist of four square leagues, as indicated on the map attached to the espediente, and contains the usual reservation of the sobrante or surplus to the nation for its convenient uses.

The map contained in the espediente, a traced copy of which is filed in the case, has all the objects called for in the grant as boundaries plainly laid down, and represents the land nearly in the form of a parallelogram, extending from east to west, from the Arroyo del Pino to the Meza de la Posa de los Ositos, and from the north to south, from the Rio Grande to the Sierra Grande; the distance between the two first mentioned points being about double that between the two last. No scale of distance is given. The justice, in making the juridical measurement, commenced at El Pino, and measured to the ascent of the Mesa, making the distance six hundred and twenty cords of fifty varas each, or 31,000 varas. He then commenced at the river and measured to the foot of the Sierra, making the distance two hundred and ten cords of fifty varas, or 10,500 varas.

If the land was laid off in an exact parallelogram, according to the measurements, it would contain thirteen square leagues; and adopting the figure represented on the map with the distances as given in the act

of juridical possession, the quantity would not be less than twelve square leagues. This, it will at once be perceived, is three times the quantity granted in the title, and greatly exceeds that which the governor was authorized to grant to one individual under any circumstances. The officer giving the possession had no power to grant, or to increase or diminish the quantity called for by the governor; his duty was simply a ministerial one, and was confined to the act of measuring and marking the boundaries of the particular tract within the limits described in the grant. This he has entirely failed to do in the present case, and the only new fact established by his measurement is, that the exterior bounds of the land contain three times the quantity granted.

We can derive no aid whatever from his action in the premises in determining on what portion of the tract the four leagues are to be located. Nor is this deficiency supplied by any other testimony; we might enter a decree for three several tracts of four leagues each, all lying within the exterior lines of the grant, and all embraced entirely different portions of the land. In this uncertain state of the testimony it is impossible for us to enter a decree for any particular four leagues of land which could be located or identified with any certainty or precision.

The claim, therefore, although apparently in other respects meritorious, must for this cause be rejected.

Filed in office, Sept. 27, 1854.

GEO. FISHER, *Sec'y.*

Decree.

CARLOS CAYETANO ESPINOSA vs. THE UNITED STATES. } No. 624.—Posa de los Ositos.

In this case, on hearing the proofs and allegations, it is adjudged by the commission, that the claim of the petitioner is not valid. It is, therefore, decreed, that his application for a confirmation thereof be denied.

ALPHEUS FELCH,
R. AUG. THOMPSON,
S. B. FARWELL,
Commissioners.

Filed in office, Sept. 27th, 1854.

GEO. FISHER, *Sec'y.*

And it appearing to the satisfaction of this board, that the land hereby adjudicated is situated in the southern district of California; it is hereby ordered, that two transcripts of the proceedings and of the decision in this case, and of the papers and evidence upon which the same are founded, be made out and duly certified by the secretary, one of which transcripts shall be filed with the clerk of the United States district court for the southern judicial district of California, and the other be transmitted to the Attorney General of the United States.

OFFICE OF THE BOARD OF COMMISSIONERS
To ascertain and settle the private land claims in the State of Cal'a.

I, George Fisher, secretary to the board of commissioners to ascertain and settle the private land claims in the State of California, do hereby certify the foregoing thirty-seven pages, numbered from 1 to 37, both inclusive, to contain a true, correct, and full transcript of the record of the proceedings, and of the decision of the said board, of the documentary evidence and of the testimony of the witnesses upon which the same is founded, on file in this office, in case No. 624, on the docket of the said board, wherein Carlos C. Espinosa is the claimant against the United States, for the place known by the name of "Posa de los Ositos."

In testimony whereof, I hereunto set my hand and affix my private seal, (not having a seal of office,) at San Francisco, California, this twenty-eighth day of February, A. D. 1855, and of the independence of the United States of America the seventy-ninth.

(Sgd.) GEO. FISHER, *Sec'y.*

UNITED STATES DISTRICT COURT,
Southern District of California.

CLERK'S OFFICE, LOS ANGELES.

I, Charles E. Carr, clerk of the district court of the United States for the southern district of California, do hereby certify that the foregoing thirty-eight pages, numbered from 1 to 38, both inclusive, contain a full, true and correct copy of transcript No. 624, filed in this office, wherein Carlos C. Espinosa is appellee and the United States are appellants, for "Posa de los Ositos."

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Los Angeles, California, this 19th day of January, A. D. 1856, and of the independence of the United States of America the eightieth.

[SEAL.]

C. E. CARR, *Cl'k.*

DISTRICT COURT OF THE UNITED STATES,
Southern district of California.

CLERK'S OFFICE, LOS ANGELES COUNTY.

CARLOS C. ESPINOSA, appellant, } Docket No. 209.
ads. } (Transcript No. 624.)
THE UNITED STATES, appellees. }

Be it remembered, that on the sixth day of March, A. D. 1855, in the district court of the United States for the southern district of California, the following proceedings were had, to wit, a duly certified transcript of the proceedings and decision of the commission to ascertain and settle the private land claims in the State of California, when sitting as a board, in the case wherein Carlos C. Espinosa is the claimant

against the United States for the place named "La Posa de los Ositos," was received and filed, and docketed with No. 209, and is as follows, to wit:

(Vide page 1.)

Los Angeles, *May 22d*, 1855.

In case No. 209, Carlos C. Espinosa, for "La Posa de los Ositos," the notice of appeal from appellant was filed.

Los Angeles, *June 6th*, 1855.

In same case a notice of appeal from appellant was filed.

Los Angeles, *July 2d*, 1855.

In the same case the notice of appeal from the U. S. Attorney General was filed.

(Vide page 3.)

Los Angeles, *Sept. 22d*, 1855.

In the same case the petition of appellant for review was filed.

(Vide page 3.)

Upon which petition the following subsequent proceedings were had in their chronological order, to wit:

Los Angeles, *Sept. 24th*, 1855.

In same case the answer of appellee was filed.

(Vide page 4.)

Los Angeles, *Sept. 24th*, 1855.

In same case the brief of counsel for appellant was filed.

(Vide page 5.)

Los Angeles, *Sept. 26th*, 1855.

In same case the opinion of the court, confirming the claim, was delivered, and the following decree entered.

(Vide page 6.)

Los Angeles, *Oct. 18th*, 1855.

In same case, on motion of P. Ord, U. S. attorney, the following order for appeal was filed.

(Vide page 7.)

Notice of Appeal.

Office of the Attorney General of the United States,
Washington, *7th April*, 1855.

Carlos C. Espinosa
vs.
The United States. } 624.

You will please take notice, that in the above case decided by the Commissioners to ascertain and settle private land claims in the State

of California in favor of the claimant, and a transcript of the proceedings in which was received in this office on the 10th day of February, 1855, the appeal in the district court of the United States for the southern district of California will be prosecuted by the United States.

C. CUSHING, *Attorney General.*

Filed July 2d, 1855.

C. E. CARR, *Clerk.*
By A. H. CLARK, *Dep.*

Petition.

CARLOS CAYETANO ESPINOSA
vs.
THE UNITED STATES.
} Appeal.—Docket No. 209.

To the hon'ble the Judge of the United States District Court for the southern district of California.

The petition of Carlos Cayetano Espinosa, a citizen of California, respectfully represents:

That under the provisions of the act of Congress of the 3d of March, 1851, he presented a petition to the commissioners appointed under said act to examine claims to land in California, praying for the confirmation of his claim to the tract of land called "Posa de los Ositos," situated in the present county of Monterey, California, under a grant from Governor Alvarado to your petitioner, dated 6th of May, 1839, and accompanied it by evidence of his title, and to which for more particular description he begs leave to refer.

That his said claim, being designated as No. 624 on the docket of the said commissioners, was rejected by them on the 27th of September, 1854; that the said land is situated within the limits of the southern judicial district of California; that a transcript of the proceedings and decision of the commissioners was filed in the office of the clerk of the court for that district on the sixth of March, 1855, and that under the date of the 22d May, 1855, a notice was filed with the said clerk that your petitioner appealed from such decision.

Your petitioner prays for a rehearing of the case upon this appeal; that the said decision of the commissioners may be reversed and annulled, and that the court will make such decree and order as may be necessary and proper, to recognise, confirm and declare valid his title and claim to the premises mentioned and referred to in his said petition and evidences of claim.

And your petitioner will ever pray, &c.

STANLEY & KING,
Attorneys for Pet'r.

Los Angeles, Sept. 21st, 1855.

Filed, Sept. 22d, 1855.

C. E. CARR, *Clerk.*
By J. W. ROSS, *Dep.*

Answer.

In the District Court of the United States for the southern district of California.—Hon. Isaac S. K. Ogier, Judge.

CARLOS CAYETANO ESPINOSA vs. THE UNITED STATES. } No. 209.—Transcript No. 624.

The answer of Pacificus Ord, attorney of the United States for the southern district of California, for and in behalf of the United States, to the petition for review or rehearing of Carlos Cayetano Espinosa, of the decision of the Board of United States Land Commissioners in said cause, says:

That he denies all and singular each and every allegation in said petition contained. And the respondent for further answer denies generally the validity of the alleged title of said claimant and petitioner. And prays that the decision of the said commissioners rejecting said claim or title of said Carlos Cayetano Espinosa in said cause may be affirmed; and the title of said claimant and petitioner decreed to be invalid, and general relief.

P. ORD,
Attorney of the United States for the Southern District of California.

Filed Sept. 24th, 1855.

C. E. CARR, *Cl'k.*

In the United States District Court for the southern district of California.

CARLOS C. ESPINOZA vs. THE UNITED STATES. } No. 209.—Brief. Pet. for review by claimant.

In this case the commissioners acknowledge "that the genuinene s of these documents and a full compliance with the conditions of the grant are established by the testimony."

The claim is declared by them to be meritorious, but was rejected because it would seem, from the proceedings connected with the juridical possession, that the officer measured more land than was asked for and within the natural boundaries specified in the grant.

The case comes clearly within the principles laid down by the Supreme Court in the Mariposas Claim, and is much stronger for the claimant.

In this case the petition, grant, and map all agree in the calls for the Rio Grande and the Arroyo del Pino which runs into the Rio Grande, as two of the boundaries, the other and opposite sides being the Sierra and Mesa. The claim would certainly have been confirmed by the commissioners if juridical possession had not been shown by the papers presented. Any error which the officer who gave that possession may have made in measuring the grant cannot certainly be allowed to destroy the effect

of the grant itself. If the possession was not given in conformity to the grant, then the act of the officer making the error is voidable, and the case stands upon the granted rights unaffected by the error.

Allowing that the natural boundaries called for contain three times the specific area asked for, the sobrante being reserved, he have the right under the Mariposa decision to take any quantity any where within those limits not interfering with any other and clearly located foreign grant.

But the court has only to act upon the title, and in so doing may decide as to the area, but the location of that area is to be made by the surveyor general.

STANLEY & KING,
for Appellant.

Filed Sept. 24th, 1855.

C. E. CARR, *Cl'k.*
By J. W. ROSS, *Dep.*

No. 21.—*Decree by McAllister, Judge.*

CARLOS C. ESPINOZA, appellant, ads. THE UNITED STATES, appellee. } No. 209. For Posa de los Ositos.

DISTRICT COURT, UNITED STATES,
for the Southern District of California.

This cause coming on to be heard at a stated term of said court, on an appeal from—

[*For map see original, page* 44]

—the final decision of the Commissioners to ascertain and settle the private land claims in the State of California, under an act of Congress approved 3d of March, 1851, upon the transcript of the decision and proceedings, and of the papers and evidence on which said decision was founded, and it appearing that said transcript has been duly filed according to law, and counsel for the respective parties having been heard, whereupon it is ordered, adjudged and decreed, that the decision of the said commissioners be in all things reversed and annulled; and it is further ordered, adjudged and decreed, that the claim of the said Carlos C. Espinoza is a good and valid claim, and that the same be and the same is hereby confirmed, to the extent of four square leagues, the quantity set forth in the original grant, a copy of which *are* on file in the record and within the limits therein mentioned; the said land to be surveyed in conformity to law and in one entire tract.

M. HALL Mc'ALLISTER,
Judge Circuit Court U. S. southern district of California.